

CITY OF FITCHBURG
SEXUAL HARASSMENT POLICY

I
DEFINING THE PROBLEM

Sexual harassment is difficult to define. It is also illegal under federal and state law and prohibited by the City of Fitchburg. The term covers a wide range of behaviors and its meaning may differ from person to person. The term encompasses such diverse conduct as jokes with sexual innuendo and sexual assault. The term is subjective in that the recipient decides whether the behavior is unwanted. Context is also relevant. Myriad factors affect whether the particular remark, or gesture is appropriate or inappropriate. The ages, the personal styles, the nature of the relationship between the employer/employees, cultural, religious and personal background all play a role.

The United States Equal Employment Opportunity Commission ("EEOC") guidelines on discrimination because of sex, 29 CFR, § 1604.11(a) (1986) state:

"Harassment on the basis of sex is a violation of Section 703 of Title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment."

Occasional compliments of a socially acceptable nature do not constitute sexual harassment. The conduct must be "unwelcome," failing to respect the rights of others as they define them. Sexual harassment occurs in many different situations which share a common element--the inappropriate unwelcome introduction of sexual activity, behavior, comment, or innuendo into the work environment. Sexual harassment can involve relationships between employees of unequal power, co-workers or even non-employees. Examples of sexual harassment may include the following:

- * Repeated offensive sexual flirtations, advances or propositions
- * Continued or repeated verbal abuse or innuendo of a sexual nature
- * Uninvited physical contact such as touching, hugging, patting or pinching
- * Verbal comments of a sexual nature about a person's body or use of sexual terms to describe someone
- * Display of sexually suggestive objects or pictures

- * Jokes or remarks of a sexual nature in front of persons who find them offensive
- * Prolonged staring or leering at a person
- * The making of obscene gestures or suggestive or insulting sounds
- * Demand for sexual favors accompanied by an implicit or explicit threat that employment status will be affected by the response

The gravamen of any sexual harassment claim is that the alleged sexual conduct was unwelcome in the sense that it was unsolicited, uninvited and undesirable or offensive to the complaining employee. Unwelcome does not mean involuntary. Someone may "voluntarily" engage in sexual conduct or endure certain behaviors because s/he needs the job.

Common Myths About Sexual Harassment and Victims

Contrary to popular belief sexual harassment is not limited to the behavior of a male employee toward a female employee or by a supervisor to a non-supervisory employee. A man or a woman can be the victim of sexual harassment. A man or a woman can be the sexual harasser. The victim of sexual harassment can be the same sex or opposite sex from the harasser. The victim does not have to be the person to whom the unwelcome sexual conduct is directed. The victim can be someone who observes conduct of others. For example, the sexual harassment of one employee can create an intimidating, hostile, humiliating, or offensive work environment for a co-worker and may interfere with that co-worker's ability to perform at work. Even consensual sexual behavior between two employees can be offensive to a third person. Favoritism toward the consenting worker is offensive to a third person to whom such favoritism is not shown. To make a claim for sexual harassment the victim does not have to prove an economic loss.

Fitchburg's Policy Towards Sexual Harassment

The City of Fitchburg prohibits sexual harassment in all of its forms at the work place or during the course of employment.

The policy guide will help employees determine whether particular conduct is harassment, how to evaluate the evidence of harassment, how a victim may raise a claim of harassment, how the City will investigate claims and what sanctions the City may impose upon employees guilty of sexual harassment.

II SEXUAL HARASSMENT COMPLAINT PROCEDURE

The City will investigate all harassment complaints quickly and fairly. If you believe you have been sexually harassed, follow the procedures outlined in this policy.

- (a) Write down a description of the offensive conduct, the date or dates when it occurred, and the names of any witnesses. This is not necessary but it may prove helpful.
- (b) The first most important goal is to stop the conduct. You should, if possible, firmly confront whomever is harassing you. You tell the offender that the conduct offends, intimidates or embarrasses you. Tell the offender to stop the conduct immediately. Bring a witness for this discussion. This kind of confrontation may stop the behavior. Sometimes confronting the harasser directly is too intimidating or uncomfortable. If you are too uncomfortable doing this, do not do it. Confronting the harasser may be helpful but it is not necessary.
- (c) If you want to discuss a situation or to make a complaint you should contact one of the sexual harassment officers listed on the last page of this policy. You will have a private meeting with the officer during which you can get more information about sexual harassment and the complaint procedure. This can help you decide what to do. If you want, bring a friend, relative, colleague, or other appropriate person to the meeting. Where an informal resolution is appropriate the investigator will advise and assist the person to resolve the problem in this fashion. If an informal resolution is inappropriate or you don't choose to resolve it informally, the officer will record your statement including: a description of each incident, the name of the alleged harasser(s), the times, locations, specific words or actions and the names of any witnesses to the incidents. These written notes are for the personal use of the officer and the City. The complainant may make his/her own notes.
- (d) The sexual harassment officer will meet privately with the alleged harasser to hear a response to the allegations. The alleged harasser may submit a written statement and should provide the names of witnesses. S/he may also bring a friend, relative, colleague, or other appropriate person to this meeting. The officer will record the alleged harasser's statement including any explanations or defenses.
- (e) The officer may contact and interview privately the witnesses suggested by either party. Neither the victim nor harasser shall be present during these interviews. The officer will record the alleged harasser's statement including any explanations or defenses.

- (f) When the officer completes the investigation s/he will draft a report containing his/her findings. S/he will send it to the personnel director or the Mayor or other appropriate person.
- (g) The City will investigate all sexual harassment complaints promptly. Unless there are extenuating circumstances, the sexual harassment officer will meet with the complainant within five business days after the complaint is made. The officer will complete the investigation and prepare written findings and recommendations within two weeks.
- (h) Persons to whom you may bring your complaint of sexual harassment:
 - (a) Bernie Stephens 978-829-1808
 - (b) Or
Anna Farrell 978-829-1821

Substitute Complaint Procedure

If you believe that you are the victim of sexual harassment but cannot comfortably utilize any aspect of this procedure because the alleged harasser is involved with the procedure, then by-pass this procedure. In such a case make your initial complaint to: the Mayor. This person will assure that no inappropriate person will process your complaint.

You also have the right to file a complaint with the following agencies:

1. Equal Employment Opportunity Commission (EEOC) (federal)
One Congress Street, Room 1001
Boston, MA 02114
(617) 565-3200
2. Massachusetts Commission Against Discrimination (MCAD)
 - (a) One Ashburton Place, 6th Floor
Boston, MA 02108
(617) 727-3990
 - (b) 436 Dwight Street, Suite 220
Springfield, MA 01103
(413) 739-2145

Confidentiality

The City will investigate and resolve complaints with as much confidentiality as possible without compromising the thoroughness of the investigation. The sexual harassment officer will not discuss the complaint or the investigation with anyone unless a legitimate need to do so exists. The City recognizes that the process affects both the privacy and the reputation of the parties. The City will not reveal the identity of the harasser or a description of the conduct to any person except those required to know either as part of the investigation or as part of the City's response to this claim. This generally will include the mayor, the personnel director, and the person's immediate supervisor.

Prohibition Against Retaliation

It is unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of a complaint for sexual harassment.

The City prohibits any form of discrimination or retaliation against any person for making a complaint alleging sexual harassment or for assisting in the investigation of such a complaint. Such retaliation or discrimination will subject the offending person to appropriate discipline including termination of employment.

Disciplinary Procedure

1. If an employee, supervisor, manager is found to have engaged in any action or conduct constituting sexual harassment, the City shall propose disciplinary action which may include immediate discharge. During any investigation, the City, in its sole discretion, may place the alleged harasser on leave with, or without, pay. The disciplinary action taken will depend upon the seriousness of the violation. These decisions are left to the personnel director in consultation with the Mayor. Any supervisor, manager, or department head who prevents or attempts to prevent any person from making any complaint of sexual harassment or fails in any way to cooperate or interferes in any way with the investigation of such complaint will be subject to disciplinary action which may include termination.
2. Any supervisor, manager or department head or employee who retaliates or discriminates in any way against any person who makes a complaint of sexual harassment or who assists in the investigation of such a complaint will be subject to disciplinary action which may include termination.
3. Any supervisor, manager or department head or employee who becomes aware of instances of sexual harassment should take immediate steps to stop it. Any supervisor, manager, or department head who knows that sexual harassment is occurring and does not take appropriate steps including reporting the conduct to the sexual harassment officer or personnel director, is subject to disciplinary action which may

include termination.

III GUIDELINES FOR SUPERVISORY PERSONNEL AND SEXUAL HARASSMENT OFFICER

The EEOC and the United States Supreme Court have defined sexual harassment as: "unwelcome sexual conduct that is a term or condition of employment." The EEOC further refines the definition by describing two types of sexual harassment--quid pro quo or hostile environment. Quid pro quo harassment occurs when submission to, or rejection of, unwelcome sexual conduct by an individual is used as the basis for employment decisions affecting that person. The hostile environment harassment occurs when unwelcome sexual conduct occurs which unreasonably interferes with an individual's job performance or creates an intimidating hostile or offensive working environment. Sexual harassment takes a wide variety of forms. In conducting an investigation or determining appropriate disciplinary action, staff will take the following into account:

- (1) whether the conduct is verbal or physical or both;
- (2) how frequently it was repeated;
- (3) whether the conduct was hostile or patently offensive;
- (4) whether the alleged harasser was a co-worker or a supervisor (or a person with employment authority over the victim);
- (5) whether more than one person engaged in the harassment; and
- (6) whether the harassment was directed at more than one individual.

A key to defining of sexual harassment is the unwelcome nature of the conduct. But this term too can provide difficulties. Look to the context to determine whether behavior was welcome or unwelcome. Ask the victim. The correct inquiry is whether the victim by his/her conduct indicated that the alleged sexual advances were unwelcome, not whether the participation in or submission to the conduct was voluntary. Remember that the circumstances or personalities involved may make it difficult for the victim to say anything. Acquiescence does not necessarily mean that the conduct is welcome. In some instances the victim may have the responsibility for telling the harasser directly that his or her behavior, comments or conduct is unwelcome. (For example, after the termination of a consensual relationship one party may have the responsibility to make clear that conduct, acceptable in the past, is no longer acceptable). In other instances, however, the victim's consistent failure to respond to suggestive comments or gestures may be sufficient to communicate the unwelcome nature of the conduct. When a woman is the victim, the standard for judging the conduct is from the perspective of the

reasonable woman. The EEOC seem to support the dissent in a court decision Rabidue vs. Osceola Refining Co., 805 F.2d 611,626 (6th Cir. 1985) on this point. The dissent stated "men and women are vulnerable in different ways and offended by different behavior." The "reasonable person test" "fails to account for the wide divergence between most women's views of appropriate sexual conduct and those of men." Therefore examine the conduct from the perspective of the reasonable victim so that the City give consideration to the salient sociological differences.

All supervisory personnel have a duty to eradicate sexually hostile or offensive work environments and to help prevent sexual harassment from occurring. You should affirmatively raise the subject at meetings for discussion. You have an obligation to investigate or to aid in the investigation of complaints since failure to investigate gives tacit support to the discrimination.

Because of the private nature of this kind of conduct, determining what happened often depends on the parties' credibility. Consequently the officer should question the complainant and the alleged harasser in detail and should seek corroborative evidence where possible.

At the end of the investigation, the officer should prepare a written report which concludes: (1) that sexual harassment occurred; (2) did not occur; or (3) that the evidence is inconclusive. The conclusion should be supported by recitation of the facts on which it is based. The report should also contain recommendations about appropriate discipline. The officer must give the report to the personnel director and the Mayor, who shall approve or disapprove it. The complainant and alleged harasser shall each receive notice of the officer's conclusion.

No person has any right to the documents created or generated as a result of the policy and procedures to deal with sexual harassment.

Disclaimer

This policy does not create any contractual rights or alter the status of municipal employees under state law or labor contract. The purpose of the policy is to further the intent and purpose of Title VII of the Civil Rights Act of 1964 as amended, General Laws, Chapter 151B and the regulations of the Equal Employment Opportunity Commission. Rather these are guidelines to be used by employees and management to address the problem of sexual harassment. These guidelines are subject to change without notice and at the sole discretion of the City.